



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

Writer's Direct Dial (212) 416-6127

July 29, 2019

By ECF

Hon. Carl J. Nichols
United States District Judge
United States District Court for the
District of Columbia
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *Trump v. Committee on House Ways and Means, United States House of Representatives, et al.*, DDC Case No. 1:19-cv-2173-CJN

Dear Judge Nichols:

This Office represents Defendants Letitia James, sued in her official capacity as New York Attorney General, and Michael R. Schmidt, sued in his official capacity as Commissioner of the New York State Department of Taxation and Finance (the “New York Defendants”), in the above-referenced action. I am compelled to write in response to Plaintiff’s reply filed this morning in support of his emergency application (ECF No. 17) (“Reply”) because he raises there *for the first time* an alternative request that the Court “enjoin the New York Defendants, instead of the Committee.” Reply at 9. The New York Defendants have been blindsided by this new request.

It is settled in this Circuit that the Court should not address arguments raised for the first time in a reply brief. *Jones v. Mukasey*, 565 F. Supp. 2d 68, 81 (D.D.C. 2008) (“As the D.C. Circuit has consistently held, the Court should not address arguments raised for the first time in a party’s reply.”) (citations omitted). Moreover, any consideration of plaintiff’s new alternative request at today’s 4pm hearing would be particularly unfair and prejudicial to the New York Defendants based on the specific facts leading up to the hearing. The New York Defendants have thus far taken no position on plaintiff’s emergency application because they were expressly assured by plaintiff’s counsel that “[o]ur application will seek relief only against the House Ways & Means Committee, not [the New York Defendants].” See attached email of 7/24/19 from plaintiff’s counsel to Letitia James and my response of 7/24/19. Also, I requested permission to

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appear for today's hearing telephonically rather than travel from New York to appear in person because the application as submitted (and represented by plaintiff's counsel) did not seek any relief against my clients.

There is simply no excuse for plaintiff's eleventh-hour expansion of the relief he is seeking to include the New York Defendants. Plaintiff received the Committee's response to his emergency application on July 25, 2019, before the case was reassigned to Your Honor (ECF No. 14). If plaintiff deemed it necessary to amend his application in order to request alternative relief against the New York Defendants based on the evident strength of the Committee's response, then his counsel should have immediately advised the Court and all defendants of his intention to do so and afforded the New York Defendants an opportunity to respond and appear in person to argue in opposition.

Accordingly, the New York Defendants strenuously object to the Court giving any consideration to plaintiff's new alternative request for relief against the New York Defendants until such time as they have had an opportunity to submit a response and their counsel can appear in person to participate in argument.

Respectfully submitted,

/s/ Andrew Amer

Andrew Amer

Special Litigation Counsel

cc: Counsel of Record (w encls. via ECF)

From: Cameron Norris <cam@consovoymccarthy.com>

Sent: Wednesday, July 24, 2019 12:18 PM

To: James, Letitia <Letitia.James@ag.ny.gov>

Cc: Underwood, Barbara <Barbara.Underwood@ag.ny.gov>; William Consovoy <will@consovoymccarthy.com>

Subject: Meet and Confer re: President's State Tax Returns

Dear Attorney General James:

I represent President Trump, in his personal capacity, in connection with the lawsuit regarding his New York tax returns. As you are aware, that lawsuit was filed in the D.C. district court yesterday (No. 19-cv-2173) and names you as one of the defendants. Hard copies of the complaint and summons will be served on your office today. I am attaching courtesy copies here as well.

We had discussions yesterday with House counsel, in the hopes of working out a framework for litigating this dispute in an orderly way that does not require judicial intervention unless or until the Committee makes a request for the President's New York returns. Those talks are still underway. If we cannot negotiate a resolution before 3:00pm today, however, we will file an emergency application for relief under the All Writs Act.

Our application will seek relief only against the House Ways & Means Committee, not you or any other defendant. But we would like to represent your position, if you have one, in our application. Do you have a position, should we need to file our emergency application?

Thank you for your consideration,

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Cameron T. Norris
Consovoy McCarthy PLLC
3033 Wilson Boulevard
Suite 700
Arlington, VA 22201
865.257.0859 (mobile)
www.consovoymccarthy.com

From: Amer, Andrew
Sent: Wednesday, July 24, 2019 3:31 PM
To: cam@consovoymccarthy.com; will@consovoymccarthy.com
Cc: Letter, Douglas <Douglas.Letter@mail.house.gov>
Subject: Trump v. House Ways and Means, et al.

Counsel:

I am the attorney who will be handling the above-referenced action on behalf of the Office of the New York State Attorney General. This will respond to your email to Attorney General James of today's date: (i) advising that, absent agreement with House counsel (cc'd here), you will be filing an emergency application for relief under the All Writs Act only against the House Ways & Means Committee and not against the Attorney General or Commissioner of the NYS Dep't of Taxation and Finance; and (ii) requesting our position, if any, on the application. This office takes no position on the application.

Pending my filing a notice of appearance, I would appreciate your providing me via email with a courtesy copy of any papers filed in the action.

Regards,

Andrew Amer
Special Litigation Counsel
New York State Office of the Attorney General
28 Liberty Street
New York, NY 10005
Tel: (212) 416-6127
Email: Andrew.Amer@ag.ny.gov